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No. 482

# In the Supreme Court of the United States

OCTOBER TERM, 1967

UNITED STATES OF AMERICA, APPELLANT

*v.*

HORACE JOHNSON, ET AL.

*ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA*

## BRIEF FOR THE UNITED STATES

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## BRIEF FOR THE UNITED STATES

### OPINION BELOW

The opinion of the district court (App. 6–9) is unreported.

### JURISDICTION

The judgment of the district court dismissing the indictment against the appellees was entered on May 15, 1967 (App. 9). A notice of appeal to this Court was filed on June 13, 1967, pursuant to 18 U.S.C. 3731 (App. 10). Probable jurisdiction was noted on October 23, 1967 (App. 11).

### STATUTORY PROVISIONS INVOLVED

Section 241 of the Criminal Code (18 U.S.C. 241) provides:

> If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in

the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or

If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured—

They shall be fined not more than $5,000 or imprisoned not more than ten years, or both.

Section 201(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000a(a)) provides:

All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the ground of race, color, religion, or national origin.

Section 207(b) of the Civil Rights Act of 1964 (42 U.S.C. 2000a–6(b)) provides:

The remedies provided in this title shall be the exclusive means of enforcing the rights based on this title, but nothing in this title shall preclude any individual or any State or local agency from asserting any right based on any other Federal or State law not inconsistent with this title, including any statute or ordinance requiring nondiscrimination in public establishments or accommodations, or from pursuing any remedy, civil or criminal, which may be available for the vindication or enforcement of such right.

## QUESTION PRESENTED

Whether conspiracies to assault Negroes for exercising the federal right to equality in public accommodations are subject only to civil injunction and not to criminal prosecution under 18 U.S.C. 241.

## STATEMENT

The indictment (App. 2), brought under 18 U.S.C. 241, alleges in substance that the appellees conspired to injure and intimidate three Negro citizens engaged in the exercise of their right to patronize a place of public accommodation (a restaurant), and that a part of the plan and purpose of the conspiracy was to beat the victims in order to dissuade them and other Negro citizens from seeking service at the establishment in question.

Since the indictment was dismissed before trial, the facts have not been developed in any detail. However, as indicated in the opinion of the district court (App. 7), government counsel, in opposing the motion to dismiss, described the acts and events which the government would be prepared to prove. We set forth this offer of proof not to suggest that the facts are yet established but only to illustrate the character of the controversy and the implications of the ruling that a trial of the case is precluded.

On the evening of January 7, 1967, three Negroes, Lester Hester, James Sheats, and John Lewis Smith, were driving through Jackson County, Georgia, on their way to Monroe, Georgia, after having attended a basketball game in Gainesville. At about 12:30 a.m. on January 8, 1967, they pulled into the parking lot

in front of a restaurant named the "53 Truck Stop", about one mile south of Interstate 85. Two of the travelers, Hester and Sheats, entered the restaurant, while Smith remained sleeping in the automobile.

Inside, at the counter, the two Negroes ordered something to eat. This apparently disturbed several white patrons, and either a waitress or the manager of the restaurant asked the Negroes to wait for their order in the kitchen. They did so, and after the order was prepared they left through a rear door and returned to their car.

As the Negroes exited through the rear door, some fifteen to twenty white males came out the front door and proceeded to the automobile. One of the three Negroes was knocked to the ground and slashed with a knife, suffering a wound on the hand (which required nine stitches) and a cut in the abdomen. Another victim was pushed and jostled a few times before he ran away. The windows of the car were smashed and the third victim, who had been asleep in the car, eluded the assailants after one of them came after him with a knife.[1]

On February 16, 1967, the United States Grand Jury for the Northern District of Georgia, Atlanta Division, returned an indictment charging four individuals with engaging in a criminal conspiracy in violation of 18 U.S.C. 241. The object of the conspiracy was alleged to be (App. 2):

> * * * to injure, oppress, threaten, and intimidate Lester Hester, James Garland Sheats, and

[1] Meanwhile, the manager of the restaurant telephoned the sheriff, but the sheriff did not respond to the call.

> John Lewis Smith, Negro citizens of the United States, as well as other Negro citizens of the United States, in the free exercise and enjoyment by said Negro citizens of the right and privilege, secured to them by the laws of the United States, to the full and equal enjoyment of the goods, services, facilities, privileges, advantages and accomodations [*sic*] of a restaurant, the 53 Truck Stop, Braselton, Jackson County, Georgia, a place of public accomodation [*sic*] as defined in Section 2000a, Title 42, United States Code, without discrimination or segregation on the ground of race, color, religion or national origin;
>
> It was a part of the plan and purpose of the conspiracy that the conspirators would strike and beat Lester Hester, James Garland Sheats, and John Lewis Smith to discourage them and other Negro citizens from seeking service at the 53 Truck Stop on the same basis as white citizens.

Thus, the basis for this prosecution is that the defendants, persons unconnected with the truck stop, severely beat Negro travelers because the Negroes had entered the truck stop, a place of public accommodation, and sought and obtained the service to which they had a federal right.

Defendants entered pleas of not guilty and thereafter moved to dismiss the indictment on the ground, that under Section 207(b) of the Civil Rights Act of 1964 the provisions for injunctive relief set forth in Title II constitute the exclusive remedy for viola-

tions of the public accommodations law and preclude prosecution under 18 U.S.C. 241. The district court recognized that 18 U.S.C. 241 protects "all Federal rights, whether flowing from the Constitution or created by Act of Congress" (App. 7), and expressed no doubt that, but for the exclusive-remedy provision contained in Section 207(b), the prosecution could proceed. The court further observed that the conduct charged "is certainly of the type that ought to call for criminal penalties" (App. 7). Nevertheless, the district court concluded that Congress intended that deprivation of the right to equality in public accommodations could be remedied only by civil actions for injunctive relief, and that for this reason criminal prosecution under 18 U.S.C. 241 is barred. The court therefore granted the motion to dismiss the indictment for failure to charge an offense against the laws of the United States. This direct appeal followed.

## SUMMARY OF ARGUMENT

In enacting Title II of the Civil Rights Act of 1964, Congress secured the right of all persons to be free from racial discrimination at places of public accommodation, and prohibited withholding or impeding this right. After specifying a right to civil preventive relief against violations, Congress then proceeded to declare that, with certain qualifications, the remedies provided in Title II would constitute the exclusive means for enforcing rights based upon that Title. Properly understood, however, this limitation does not preclude criminal prosecution under 18 U.S.C. 241 for the kind of conduct alleged in the indictment

in this case—a conspiracy among persons not affiliated with a place of public accommodations, to molest and assault Negro travelers because of their exercise of the rights guaranteed to them by Title II.

As a general rule, the creation of a civil remedy to correct a violation of a federal right does not displace the power of the United States to assert the public interest in prosecuting criminal conspiracies. Only when Congress has clearly decreed that no criminal prosecution may be undertaken should description of a civil remedy as exclusive be construed as precluding the enforcement of the corresponding criminal law.[2] The legislative history of this statute does indicate that Congress intended to prohibit criminal prosecution of proprietors for certain forms of recalcitrance and non-compliance with Title II. However, nothing in the language of the Act, the congressional reports and debates, or the scheme of the legislation supports the view that Congress meant to immunize racially motivated assailants from the criminal consequences of conspiring to oppress Negroes for exercising their federal rights.

[2] *United States* v. *Stevenson*, 215 U.S. 190; *United States* v. *Hutto*, 256 U.S. 524.

## ARGUMENT

### CONGRESS DID NOT INTEND THAT THE EXCLUSIVE-REMEDY PROVISION IN SECTION 207(b) OF THE CIVIL RIGHTS ACT OF 1964 WOULD INSULATE A CONSPIRACY TO COMMIT ASSAULT FROM THE NORMAL CRIMINAL PENALTIES ATTACHED TO THE VIOLATION OF FEDERALLY PROTECTED RIGHTS

On July 2, 1964, the Congress passed, and the President signed, the Civil Rights Act of 1964. Title II defined the right of all persons to share in the equal enjoyment of public accommodations, free of discrimination or segregation because of their race, color, religion or national origin (Section 201(a), *supra*, p. 2).[3] This case turns upon the effect of Section 207 (*supra*, p. 2) which, after conferring jurisdiction on the United States district courts to entertain proceedings under Title II, provides in paragraph (b) that the "remedies provided in this title shall be the exclusive means of enforcing the rights based on

[3] Section 203 forbids withholding or denying the rights secured by Section 201, and prohibits intimidating or coercing any person with the purpose of interfering with his right to be free of racial segregation in the use of public accommodations (42 U.S.C. 2000a–2). Violation, or the threat of violation, of the proscription of Section 203 renders a person liable to a "civil action for preventive relief" instituted by the person aggrieved. If, however, the alleged violation would also be prohibited by State or local law, then these authorities must first be given thirty days notice to take action; if the alleged violation occurs in a State whose laws do not prohibit it, then the court may refer the matter to the Community Relations Service for up to 120 days if the court believes there is a reasonable possibility of voluntary compliance (42 U.S.C. 2000a–3, 4). A detailed discussion of the history and provisions of Title II of the Act is set out in this Court's opinion in *Heart of Atlanta Motel, Inc.* v. *United States*, 379 U.S. 241, 243–249.

this title * * *." The question before the Court is whether Congress intended by this provision to bar prosecution of racially motivated assailants for conspiring, in violation of 18 U.S.C. 241, to oppress Negroes in the exercise of their right to equality in public accommodations.[4] We submit that such a result would distort the purpose and understanding of Congress.

Although the language of Section 207(b) does not in terms bar federal criminal prosecutions, the legislative history does indicate, as we point out below, that when Congress spoke of making Title II remedies the "exclusive means of enforcing the rights based on this title" it did intend to rule out at least some prosecutions. The question that remains for judicial interpretation is how extensive Congress intended this preemption to be. As we shall urge, congressional solicitude to protect proprietors from punitive sanctions for acts of withholding service until there has been a concrete adjudication of the obligation to provide it does not justify a narrowing of the historic role of Section 241 so as to immunize outsiders engaged in violent retaliation against those who seek to exercise their declared federal rights.

### A. THE BROAD SCOPE OF 18 U.S.C. 241

Nearly a century ago, Congress enacted the Enforcement Act of 1870, containing the criminal prohi-

[4] This question was raised in *United States* v. *Guest*, 383 U.S. 745, where the government appealed directly from the dismissal of an indictment under 18 U.S.C. 241. There, the Court decided, however, that since—unlike the instant case—the dismissal had been rested on the alternative finding that the indictment was deficient as a matter of pleading, the dismissal was not properly reviewable by direct appeal. 383 U.S. at 749–752.

bition now codified in 18 U.S.C. 241. As this Court recently explained in *United States* v. *Price*, 383 U.S. 787, in this statute Congress exerted its utmost powers to secure federal rights from conspiratorial violations. The immediate occasion for outlawing even non-official conspiracies directed against federal rights was the activity of the Ku Klux Klan and the continued denial of rights to Negroes, "sometimes accompanied by violent assaults". *United States* v. *Price, supra*, 383 U.S. at 800, 802; *United States* v. *Mosley*, 238 U.S. 383, 387–88. Over the course of many years this Court has catalogued numerous federal rights that are protected under this section.[5] In implementing Section 241 the guiding principle has been that "history leaves no doubt that, if we are to give § 241 the scope that its origin dictate, we must accord it a sweep as broad as its language." *United States* v. *Price, supra*, 383 U.S. at 801. Thus, putting aside for the moment the impact of Section 207(b) of the Civil Rights Act, a violent conspiracy to injure Negro citi-

[5] This Court has made clear that Section 241 covers such rights as the right to travel freely in interstate traffic, *United States* v. *Guest*, 383 U.S. 745; the right to vote in federal elections, *Ex parte Yarbrough*, 110 U.S. 651; the right to perfect a homestead granted under a federal statute, *United States* v. *Waddell*, 112 U.S. 76; the right to be free of violence while in the custody of a federal marshal, *Logan* v. *United States*, 144 U.S. 263; the right to report violations of federal law to appropriate authorities, *Motes* v. *United States*, 178 U.S. 458, *In re Quarles and Butler*, 158 U.S. 532; and the right of federal officers to perform their duties, *United States* v. *Mason*, 213 U.S. 115. In addition, the section has frequently been held applicable to interference, by corruption or fraud, with the right to vote in federal elections. *United States* v. *Saylor*, 322 U.S. 385; *United States* v. *Classic*, 313 U.S. 299; *United States* v. *Mosley*, 238 U.S. 383. Recently, in *Price*, the section was also applied to protect Fourteenth Amendment rights.

zens for exercising their right to unsegregated public accommodations, as charged in the indictment, would clearly be punishable under 18 U.S.C. 241. This is a wholly relevant consideration in accommodating the primary purposes of the two statutes here at issue.

### B. THE PURPOSE OF TITLE II

Legislation assuring Negroes the right to equal access to public accommodations was the product of years of arduous investigation, drafting, and debate, which revealed a sharp awareness that a degradation of human values, as well as social and economic detriment, resulted from prevailing patterns of discrimination. It is in this light that we approach the question whether Congress, in 1964, specifically decided to alter the historic role of Section 241 and thus to immunize from criminal liability violent conspiracies designed to deprive Negro citizens of federal rights assured to them by the Act.

The heart of Title II is Section 201(a), guaranteeing to all persons the right to "full and equal enjoyment of the goods, services," etc., of any place of public accommodation without discrimination on account of race, color, religion or national origin. Section 203 prohibits violations of this right, and Section 204 affords a remedy by way of a "civil action for preventive relief" in order to effectuate the right. Section 207(b) goes on to state that the "remedies provided in this title shall be the exclusive means of enforcing the rights based on this title."[6] That language was con-

[6] The original draft of the Civil Rights bill spoke of enforcing rights "hereby created" by Title II. This section was amended on the floor of the Senate to refer to rights "based on this title," the language that became law. This was termed a "perfecting amendment" because: "One can get into a juris-

strued by the district court as barring resort to 18 U.S.C. 241 to punish violent conspiracies, even by outsiders who had nothing themselves to do with the ownership or operation of the place of public accommodation involved.

Immediately after the clause that characterizes the remedies defined in Title II "exclusive", however, the very same paragraph of Section 207(b) provides that other avenues for vindicating the interests that Title II was designed to protect are preserved. The paragraph explicitly declares that the exclusive-remedy clause does not preclude the assertion of "any right based on any other Federal or State law not inconsistent with this title" or prevent the pursuance of "any remedy, civil or criminal, which may be available for the vindication or enforcement of such right." Within the four corners of the so-called exclusive-remedy restriction itself, therefore, there is evidence that Section 207(b) was not conceived of as preempting every other mode of protecting the interests covered by Title II. It is in this perspective that we urge that a proper interpretation of this section, in light of all its terms and not merely the introductory clause, requires reinstatement of the indictment in this case.

More particularly, the exclusive-remedy clause itself speaks in terms of "enforcing the rights based on this title." The essential right sought to be enforced is to equality in public accommodations. Over the long

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prudential argument as to whether the title creates rights. Many believe that the title does not, but that the rights are created by the Constitution." 110 Cong. Rec. 13473 (remarks of Sen. Miller).

term, that right will ordinarily be enforceable only by direct action against proprietors—not against outsiders unconnected with the particular place of business. In other words, Section 207(b), properly construed, means only that the sole mechanism for obtaining the right to unsegregated service at a facility of public accommodation is by injunctive action. However, for violation of another federal statute, not inconsistent with Title II, which forbids violent conspiracies to discourage the assertion of federal rights, civil preventive relief is not the only recourse. This view is further supported by the final portion of Section 207(b), which qualifies the otherwise sweeping language of its opening clause. See, also, Section 1103, 42 U.S.C. 2000h–3. This construction, in our view, reconciles the language of the Act and the congressional plan with the evident realities of the situation.

This Court described the Civil Rights Act as "undertaking to prevent *through peaceful and voluntary settlement* discrimination in voting, as well as in places of accommodation and public facilities, federally secured programs and in employment." *Heart of Atlanta Motel, Inc.* v. *United States,* 379 U.S. 241, 246 (emphasis added). Title II provides only for "peaceful and voluntary" methods of securing compliance with the newly defined rights. This is apparent from the methodical and detailed steps that are to be followed before a suit for preventive relief can be pursued. If State or local officials are authorized to grant relief from the discriminatory act or practice, they must first be given thirty days' notice within which to take action. If there is no applicable State program, the district

judge, if he feels there is a reasonable possibility of obtaining "voluntary compliance," may refer the dispute to the federal Community Relations Service for up to four months of mediation. It is evident from these provisions that the focus of the remedies in Title II is on an attempt to work out long-range acquiescence *by the proprietors of facilities of public accommodations*—those on whose compliance the eventual and lasting success of the Act depends.

But such proceedings and negotiations have no relevancy with respect to outsiders, who have no connection with the ownership or operation of a place of public accommodation, and who seek by violence or intimidation to prevent the exercise of the right which the owner or operator is willing to recognize.

### C. THE LEGISLATIVE HISTORY

Analysis of the relevant legislative history confirms this view of the congressional purpose and shows that the exclusive-remedy language of Section 207(b) was not designed to immunize racial terrorists from criminal liability.

Congress was well aware that the objective of voluntary desegregation might be blunted by the pressures of competition and community sentiment.[7] Congress consciously undertook to devise methods of persuasion and enforcement which would overcome resistance rather than arouse it; its tactic was to apply only as

[7] See Hearings Before the Senate Committee on Commerce on S. 1732, 88th Cong., 1st Sess., pt. 1 at 206 (testimony of Assistant Attorney General Marshall); *id.* at 324 (statement of Hon. Frank H. Morris); *id.*, pt. 2 at 690 (testimony of Under Secretary of Commerce Roosevelt); 110 Cong. Rec. 9765–9767 (statement of Senator Humphrey).

much leverage as necessary to overcome the countervailing tendencies and forces. Congress perceived that a proprietor—perhaps beset by social and economic pressures and unsure of the new federal statute's applicability to his establishment—might deliberately deny service to a Negro in pursuit of his long-standing policy. Such an individual, Congress determined, should not be subjected, if he proved mistaken in his understanding of his legal obligations, to criminal penalties or monetary damages, at least under federal law. This policy was given explicit expression in the exclusive-remedy provision. Thus, Senator Humphrey, the floor manager of the bill, explained the impact of the limitation: "This would mean for example, that a proprietor who, in the first instance, legitimately—but erroneously—believes his establishment is not covered by section 201 or section 202 need not fear a jail sentence or a damage action if his judgment as to coverage of Title II is wrong." 110 Cong. Rec. 9767. Senator Young also sought to reassure opponents of the bill: "The prohibitions of Title II would be enforced only by civil suits for an injunction. Neither criminal penalties nor the recovery of money damages would be involved." 110 Cong. Rec. 7384. Senator Magnuson also made it clear that because of Section 207(b) the owner had no fear of a jail sentence unless he failed to comply with a court order.[8]

[8] Senator Magnuson stated: "Moreover, in every case, a judicial determination of coverage must be made prior to the entry of any order requiring the owner to stop discrimination. Thus, no one would become subject to any contempt sanctions—the only sanctions provided for in the act, until after it has been judicially determined that his establishment is subject to the act

The district court regarded the statements by these Senators as supporting dismissal of the indictment. Taken in context, however, these assurances merely reflect the judgment that proprietors who have not already had the opportunity to litigate the application of Title II to their facilities and have not been specifically directed to offer unsegregated service are not to be subjected in the first instance to criminal or pecuniary liability for deliberately refusing to furnish such service. But there is no indication whatever, either in the statements referred to or elsewhere in the legislative history, that Congress desired that those who conspire to beat and terrorize Negroes in order to deter them from exercising Title II rights should merely be enjoined from doing it again.[9] The relevant discussion was in terms of "a proprietor", or "the owner". It is clear that these were the persons who were to be shielded from civil and criminal liability, not outside conspirators.

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and he has been ordered by the Court to end this discrimination, and he has violated that Court order." 110 Cong. Rec. 7405.

[9] The district court conceived of an anomaly which we believe is unfounded. The court concluded that the government's position would permit "a wily owner * * * [to] instigate a violation of this right [to undiscriminated access to public accommodation], engage a group of hoodlums to carry it out, and yet be an exception to any penalty for his own wrongdoing" (App. 7). Since no proprietor is involved in this case, the issue of a proprietor's criminal liability for the type of conduct described by the district court is not presented here. In any event, Section 207(b) need not be construed as insulating a proprietor from prosecution if he engages with others in a violent conspiracy, rather than in a mere withholding of service.

It is true, to be sure, that the conduct described in the indictment—the deliberate use of violence upon Negroes who had done nothing other than to seek and secure food service—is forbidden by Section 203(b) and could thus form the basis for injunctive relief under Section 204. It is equally clear, however, that an injunction, if granted, would be effective only in the limited way of prohibiting similar assaults by the same conspirators. In cases such as the instant one—where the conspiracy is formed on the spot and results in an immediate assault upon the victims—an injunction is obviously a totally inappropriate method of protecting the exercise of rights. When there is a pattern or practice of violence or other forms of punishment and intimidation directed against the exercise of Title II rights, the injunctive remedy is a pertinent one.[10] But when the conduct is unofficial and sporadic, the existence of a federal criminal penalty is the only effective means by which the United States can protect its interest in the free exercise of federal rights by its citizens.[11]

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[10] In such cases—where there is such a pattern and practice—the Attorney General can also seek an injunction under Section 206(a). See, *e.g.*, *United States* v. *Sampson*, 256 F. Supp. 470, (N.D. Miss.) (three-judge court); *United States* v. *Original Knights of the Ku Klux Klan*, 10 Race Rel. L. Rep. 1449, 11 Race Rel. L. Rep. 53 (E.D. La. 1965) (three-judge court).

[11] The court below believed that its understanding of Congress's purpose was confirmed by the fact that an amendment to provide "direct criminal proceedings" was "soundly defeated" (App. 9). The amendment, defeated by the Senate by a two-to-one margin, was proposed by Senator Thurmond of South Carolina and would have *substituted* misdemeanor liability for the injunctive relief provisions of Title II. The "evil" that this amendment was expressily aimed at was that, in Senator Thur-

We revert to Senator Humphrey's statement (quoted in part above and relied on heavily by the district court) because it fairly typifies the legislative history.[12] Its true import is that the exclusive-remedy provision was inserted only to make it clear that the

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mond's view, the "practice of enforcement by injunction and the following punishment by contempt proceedings has become too widespread." 110 Cong. Rec. 13647. Rejection of this attack on what was elsewhere condemned as "government by injunction", H. Rep. 914, 88th Cong., 1st Sess. 46–50 (1963) (Additional views of Hon. George Meader), scarcely indicates that Congress disapproved of *all* criminal liability. The Thurmond amendment would have undermined what we have seen was a delicate congressional tailoring of an injunctive remedy designed to apply the minimum necessary pressure to a reluctant proprietor.

[12] The statement was introduced as follows (110 Cong. Rec. 9767): "I have asked the Justice Department to aid me in the discussion of Section 205(b) [207(b) in the final bill] and I ask unanimous consent to have the explanation printed in the Record."

"There being no objection, the statement was ordered to be printed in the Record as follows:

EXPLANATION OF SECTION 205(B) OF TITLE II

* * * * *

* * * The clause which reads that "the remedies provided in this title shall be the exclusive means of enforcing the rights hereby created" is designed to make clear that a violation of sections 201 and 202 cannot result in criminal prosecution of the violator or in a judgment of money damages against him. This language is necessary because otherwise it could be contended that a violation of these provisions would result in criminal liability under 18 U.S.C. 241 or 242, or in civil liability for damages under 42 U.S.C. 1983 or 1985. Thus, the first clause in section 205(b) simply expresses the intention of Congress that the rights created by Title II may be enforced only as provided in Title II. This would mean, for example, that a proprietor who, in the first instance, legitimately—but erroneously—believes his establishment is not covered by section 201 or 202 need

*substantive right* specified in Sections 201 and 202 to obtain service in places of public accommodation free from discrimination is to be enforced exclusively by injunction.[13]

We say that this is the true import because at no point in Title II or in its legislative history did Congress evidence an intent to exempt violent conspiracies from the criminal penalties otherwise attached to such conduct. Moreover, the whole legislative setting reinforces this interpretation of Section 207(b). One can hardly attribute to Congress a purpose to grant a new right to millions of Negro citizens and yet to legislate away the sanction in 18 U.S.C. 241 against violent conspiracies designed to deter the exercise of this very right. Thus, in the absence of the clearest evidence of congressional intention to the contrary, Section 241 should be regarded as continuing to encompass "*all* of the rights and privileges secured to citizens by *all* of the Constitution and *all* of the laws of the United States." *United States* v. *Price,* 383 U.S. 787, 800. Normally, provision of an exclusive civil remedy does not displace criminal statutes that would other-

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not fear a jail sentence or a damage action if his judgment as to the coverage of Title II is wrong. Of course, after a court orders him to comply he must comply and he may be punished for contempt if he fails to do so.

* * * * *

[13] In explaining Title II, the House committee observed that this title "would prohibit discrimination on grounds of race, color, religion, or national origin in specified places of public accommodation (sec. 201)" and then pointed out that the "prohibitions of title II would be enforced only by civil suits for an injunction (sec. 204(a))." H. Rep. No. 914, 88th Cong., 1st Sess. 20 (1963). The focus of the "prohibition" was, of course, the substantive ban on segregation in a covered facility.

wise be applicable (see note 2, *supra*, p. 7). Since the language of Title II does not of itself prohibit the prosecution of those responsible for conspiracies to commit violence, and since the manifest purpose behind Section 207(b) was only to preclude the criminal prosecution of proprietors who merely refuse to serve Negroes, the Court should not interpret the Civil Rights Act of 1964 as erecting a bar against the instant prosecution under Section 241.

## CONCLUSION

For the reasons stated, the judgment of the district court should be reversed and the indictment reinstated.

Respectfully submitted.

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DECEMBER 1967

U.S. GOVERNMENT PRINTING OFFICE: 1967